

City Council Introduction: **Monday**, October 9, 2000  
Public Hearing: **Monday**, October 16, 2000 at 1:30 p.m.

Bill No.00-183

## **FACTSHEET**

**TITLE:** ANNEXATION NO.00004, requested by the Director of Planning, to annex approximately 84.46 acres generally located at South Folsom and South Streets.

**STAFF RECOMMENDATION:** Approval.

**ASSOCIATED REQUESTS:** Change of Zone No.3278 (00-182) and Preliminary Plat No.00019, South Street Business Park (00R-285).

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: September 6, 2000  
Administrative Action: September 6, 2000

**RECOMMENDATION:** Approval (8-0: Krieser, Newman, Hunter, Duvall, Taylor, Schwinn, Carlson and Bayer voting 'yes'; Steward absent).

### **FINDINGS OF FACT:**

1. This annexation request and the associated Change of Zone No.3278 and Preliminary Plat No.00019, South Street Business Park, were heard at the same time before the Planning Commission.
2. The Planning staff recommendation to approve the annexation is based upon the "Analysis" as set forth on p.4-5, concluding that the annexation proposal is in conformance with the Comprehensive Plan. Specifically, it meets the annexation policies of the plan and is within the future service limit. This area is contiguous to the city and is generally urban in character. Even though a proposal is in conformance within the future service limit, the City should only approve an annexation when the infrastructure is in place or has been provided for in the City's CIP or by the applicant. In this case the improvements will be completed as part of the South Street Business Park subdivision. Thus, it is appropriate to approve this annexation request at this time.
3. The testimony in support is found on p.7-8.
4. There was no testimony in opposition.
5. On September 6, 2000, the Planning Commission voted 8-0 to agree with the staff recommendation of approval.

**FACTSHEET PREPARED BY:** Jean L. Walker

**DATE:** October 2, 2000

**REVIEWED BY:** Kathleen A. Sellman

**DATE:** October 2, 2000

**REFERENCE NUMBER:** FS\CC\FSA00004

44

**DATE:** August 28, 2000

Annex approximately 84.46 acres of land, generally located at South Folsom and South Streets

Kathleen A. Sellman, AICP  
Director of Planning  
555 S. 10th Street  
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(402) 441-7491

Ray Hill, Planner  
Planning Department  
(402) 441-6371

## South Folsom Street and South Street

Approval of annexation.

See attached.

## I-1 Industrial

**SIZE:**

84.46 acres, more or less.

**SURROUNDING LAND USE AND ZONING:**

To the north is vacant zoned I-1,  
to the east is vacant and industrial zoned I-1,  
to the south is vacant and industrial zoned I-1,  
to the west is vacant zoned I-1, and  
to the northwest is industrial and commercial.

**EXISTING LAND USE:**

Vacant

**COMPREHENSIVE PLAN SPECIFICATIONS:**

IN CONFORMANCE. The 1994 Lincoln/ Lancaster County Comprehensive Plan designates this area as Phase I and as inside the "Anticipated Year 2015 Future Service Limit" according to Figure 65, "Anticipate 2015 Lincoln Service Limit and Phasing Plan", page 197.

**HISTORY:**

During the **1979** Zoning Update the area was converted from K Light Industrial to I-1 Industrial.

On June 7, 2000, the South Street Business Park Preliminary Plat was submitted.

**SPECIFIC INFORMATION:****DESCRIPTION OF PROPERTY:**

This property is vacant but is being prepared for development with City services.

**UTILITIES & SERVICES:****A. Sanitary Sewer:**

Already available to serve this property.

**B. Water:**

Already available to serve this property.

**C. Roads:**

South Street and Folsom Street are paved.

**D. Parks and Trails:**

This annexation will not significantly impact the Parks and Recreation Department.

**E. Fire Protection:**

There do not appear to be any problems serving this area by the Lincoln Fire Department. The nearest fire stations are located at 17<sup>th</sup> & Van Dorn and between A Street and South Street east of Coddington Ave.

**F. Schools:**

This area is already in the Lincoln Public School District.

**ANALYSIS:**

1. This annexation is in conformance with the Comprehensive Plan. Specifically, it is within the future "Lincoln Service Limit" and is in Phase I as shown on Figure 65, "Anticipated 2015 Lincoln Service Limit and Phasing Plan" on page 197 of the 1994 Lincoln/ Lancaster County Comprehensive Plan.
2. This proposal is also in conformance with the annexation policies on page 191 of the Plan, specifically the policies that state:
  - ! Land which is remote from the limits of the City of Lincoln will not be annexed; land which is contiguous and generally urban in character may be annexed; and land which is engulfed by the City should be annexed.
  - ! Annexation generally implies the opportunity to access all City services (i.e., police, fire). Voluntary annexation agreements may limit or outline the phasing, timing or development of utility services (i.e., water, sewer) and may include specific or general plans for the financing of improvements to the infrastructure and the land uses of the area.
  - ! Plans for the provision of services within the areas considered for annexation should be carefully coordinated with the Capital Improvements Program of the city and the county."

3. This property is contiguous and is urban in character. Access to all City services are currently available. An amendment to the Capital Improvement Program is not necessary to serve this property.
4. The Planning Department completed an Annexation Reconnaissance Study in October 1995, which was approved by the Planning Commission and City Council in October/November 1995. This area was one of seven areas recommended for immediate preparation of annexation ordinances. The reconnaissance study identified areas contiguous to the city, within the future service limit, that were urban in character and in which city services were generally available.
5. The Public Works and Utilities Department and Fire Department have no objections to this annexation.

**CONCLUSION:**

This annexation proposal is in conformance with the Comprehensive Plan. Specifically it meets the annexation policies of the plan and is within the future service limit. This area is contiguous to the city and is generally urban in character

Even though a proposal is in conformance within the future service limit, the City should only approve an annexation when the infrastructure is in place or has been provided for in the City's CIP or by the applicant. In this case the improvements will be completed as part of the subdivision. Thus, it is appropriate to approve of this annexation request at this time.

**STAFF RECOMMENDATION:**

Approval of the Annexation

Prepared by:

Ray Hill  
Planner

Legal Description:

Property legally described as Lots 15-20, Block 2; Lots 15-26, Block 3; and Lots 16-23, Block 4; all in South Side Addition; S. Side Blvd.; W. Washington St.; W. Garfield St.; vacated W. Sumner St.; W. Rose St.; Lot 94 I.T. (C.B. & Q. Railroad R.O.W.), Lots 133, 134, 166, 167 I.T.; a portion of Lot 168 I.T.; and Lot 169 I.T.; all located in the NE 1/4 of Section 34, T10N, R6E, Lancaster County, Nebraska, generally located at SW 6<sup>th</sup> Street and West South Street.

**ANNEXATION NO.00004  
and  
CHANGE OF ZONE NO. 3278  
TO CHANGE THE BUILDING LINE DISTRICT  
and  
PRELIMINARY PLAT NO.00019  
SOUTH STREET BUSINESS PARK**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

September 6, 2000

Members present: Krieser, Newman, Hunter, Duvall, Taylor, Schwinn, Carlson and Bayer;  
Steward absent.

Planning staff recommendation: Approval of the Annexation and Change of Zone, and conditional approval of the Preliminary Plat.

Ray Hill of the Planning Department submitted a memo from the Parks Department with no additional comments, and a memo from the Fire Department finding the annexation acceptable.

Proponents

**1. Mark Hunzeker** appeared on behalf of the developer of this site. He believes the annexation and the building line district change are self-explanatory. They have met with staff for several months. This is an 84 acre site basically all in the 100 year floodplain. The Corps of Engineers study assumed that this entire floodplain area would be filled 100% up to the designated floodway. In accordance with that study and city regulations, the developer has obtained a permit to push fill on this property, which has largely been done, with the exception of about a 15-acre site which is being proposed to the Corps as a wetland bank. The agreement is under review and they have received very positive comments from the Corps and NRD. He anticipates the agreement will be back from the Corps soon.

Hunzeker explained that the proposal is for an upscale business park which will be a significant improvement in this area. They are in the process of drafting restrictive covenants which will require significant landscaping on each of the lots in addition to controlling construction materials, signage and plant approval. The developer has modified the street system, worked out drainage issues, modified access to the wetland areas, improved access to the dike along Salt Creek, and agreed to minimize the amount of fill on individual lots to raise only the building pad rather than the entire site, which is a substantial reduction in the amount of fill that could otherwise be legally placed on the property.

Hunzeker had only one condition of approval to address. The developer has requested a waiver of sidewalks adjacent to South Street and Folsom Street abutting this property. There are no sidewalks on the north side of South Street and there are no sidewalks on Folsom in either direction until you get between 1/4 and 1/2 mile north of South Street. Hunzeker suggested that Condition #1.1.1 be amended such that the sidewalks along South Street and Folsom Street are waived; however, the subdivider and its successors and assigns shall waive any objection to the creation of a sidewalk district at such time as the City of Lincoln deems sidewalks to be necessary.

There was no testimony in opposition.

Carlson wondered when the sidewalks would be deemed necessary if Hunzeker's proposed amendment to Condition #1.1.1 is granted. Hill suggested that it would probably be when there is enough foot traffic to justify a sidewalk. Because of the amount of frontage this individual has, if the city had a petition to put in the sidewalks, this group of individuals would not have the opportunity to protest that, which would lead to the fact that they would most likely be installed if it becomes a need. Hill agreed with the proposed amendment to Condition #1.1.1.

Carlson sought confirmation that everything this developer has done is in compliance the floodplain regulations. Nicole Fleck-Tooze of Planning staff concurred that everything proposed on the plat meets the requirements of the subdivision ordinance that currently exist for floodplain issues. They have already obtained a floodplain fill permit from Building & Safety. Carlson stated that he has received citizen calls concerned about odors and dirt being moved around in this area. Fleck-Tooze advised that a floodplain fill permit can be issued prior to approval of the plat.

Newman noted that the ordinance provides that they cannot put in so much fill that it increases the height of the water 1'. Fleck-Tooze explained that the ordinance actually refers to a floodway and flood fringe. Within the fringe area they are permitted to place as much fill as they would like.

Fleck-Tooze further advised that the "no net rise" goes beyond our present requirements. Today we assume we would have 1' of rise. The Health Dept. did express that as a concern. This application does not propose "no net rise". There presumably would be some amount of rise, but they are meeting all of the current regulations.

#### Response by the Applicant

Hunzeker added that if the amendment to Condition #1.1.1 is granted, then Condition #3 needs to be deleted.

With regard to floodplain, Hunzeker suggested that this plat does not raise the floodplain issue all by itself. The plat itself is really neutral relative to the floodplain. The developer has the right and has the permit to place the fill on the site as it stands today. We could do everything that we intend to do by this subdivision by use of private drives and simply constructing multiple buildings and doing a condominium on this site without coming to the city for approval

at all. The subdivision itself is not a vehicle for enforcing floodplain policy. But this application is in compliance with all the floodplain regulations and they are probably already about 90% complete on the fill that will get the property up. They have not filled the building pad sites yet because until you have building plans you don't know what the size will be. He anticipates that a lot of the buildings will have loading docks which will keep the grade down on half to two-thirds of the building.

Hunter expressed that she was at a loss to understand. It is scary to her having comments from the Health Department that strongly advocates no net rise, etc. Did the ordinance regarding storm water not go to the extent that it needed to address these kinds of things? Then what happens if there is a flood? Fleck-Tooze explained that the storm water ordinances that were recently adopted are separate from the issue of floodplain storage. The staff has talked a lot about bringing something forward and is in the process of looking at some studies to identify the issues and solutions. The city is working with the NRD and Corps to collect studies to look at no net rise and no loss of flood storage. It is anticipated that within the next year, the staff will be in a position to bring forward some revisions to the floodplain ordinance to address the issue. This is a straight preliminary plat which meets the requirements of subdivision ordinance.

Hunzeker suggested that the Health Dept. has no regulations on the subject. It's a situation where no net rise really doesn't apply to floodplain or flood fringe areas. It applies to floodways. This developer has complied with all the regulations.

Public hearing was closed.

**ANNEXATION NO. 00004**

**ADMINISTRATIVE ACTION BY THE PLANNING COMMISSION:** September 6, 2000

Duvall moved approval, seconded by Schwinn and carried 8-0: Krieser, Newman, Hunter, Duvall, Taylor, Schwinn, Carlson and Bayer voting 'yes'; Steward absent.

**CHANGE OF ZONE NO. 3278**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** September 6, 2000

Duvall moved approval, seconded by Schwinn and carried 8-0: Krieser, Newman, Hunter, Duvall, Taylor, Schwinn, Carlson and Bayer voting 'yes'; Steward absent.

**PRELIMINARY PLAT NO. 00019**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** September 6, 2000

Duvall moved approval, with conditions, with amendment to #1.1.1 as requested by the applicant and deleting Condition #3, seconded by Schwinn.

Newman apologized, but building in a floodplain is a public health issue and she cannot vote for this. She urged the Board of Health to come up with a recommendation that says this is what the Health Dept. believes is correct or incorrect. She will not vote to approve because 20 years down the road, if this does flood downstream, she does not want to be responsible.

Rick Peo, City Attorney, interrupted the discussion. He noted a tendency to have protest votes and it is totally inappropriate. There are guidelines in the land subdivision ordinance that provide that the Planning Commission shall approve a preliminary plat if it complies with the minimum requirements. The function as Planning Commission is to abide by the requirements of the ordinance and approve things that do comply. Peo suggested that the Commission spends too much time on protest votes that should go back to staff to change the law. In that case, Newman stated that she wants the no net rise legislation brought forward in the next two weeks.

Carlson noted that he had two or three calls about the dirt being moved. He understands that this complies with the standard as it exists. But this is analogous to what we continue to refer to as the acreage issue. We need guidance and resolution on these issues. It is not a protest vote but only to raise the issue. He will use this opportunity to urge staff to continue moving in the direction toward no net rise.

Motion for conditional approval, with amendments, carried 7-1: Krieser, Hunter, Duvall, Taylor, Schwinn, Carlson and Bayer voting 'yes'; Newman voting 'no'; Steward absent.